IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 203 of 1989
WITH
CRIMINAL APPEAL No 35 of 1990
WITH
CRIMINAL APPEAL No 951 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMESH GANPATRAO BENDBAR
Versus
JIVANLAL MANGALDAS SHAH

Appearance:
1. Criminal Appeal Nos. 203 of 1989, 35 & 951 of 1990 :
(MR GN DESAI) for Appellant No.
MR PRANAV G DESAI for Appellants.
NOTICE SERVED for Appellant No.
MR AI PATHAN for MR BS PATEL for Respondent No. 1
MRS RANJAN B PATEL for Respondent No. 1
MR KV SHELAT & RA VARIAVA for Respondents
MR RC KODEKAR, APP for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 16/12/2004

ORAL COMMON JUDGEMENT

1. All these appeals are filed by the Food Inspectors attached to Vadodara Municipal Corporation challenging the judgments and orders of acquittal passed in favour of the respondents.

1.1. Criminal Appeal No. 203 of 1989 is filed against the judgment and order of acquittal dated 30th July, 1988 passed by the Ld. Judicial Magistrate First Class, Municipal Court, Vadodara, in favour of the respondents in Criminal Case No. 2810 of 1982. Criminal Appeal No. 35 of 1990 is filed against the judgment and order of acquittal dated 13th February, 1990 passed by the Ld. Judicial Magistrate First Class, Municipal Court, Vadodara, in favour of the respondents in Criminal Case No. 2017 of 1984. Criminal Appeal No. 951 of 1990 is filed against the judgment and order of acquittal dated 29th June, 1989 passed by the Ld. Judicial Magistrate First Class, Municipal Court, Vadodara, in favour of the respondents in Criminal Case No. 13835 of 1984. The respondents in all the appeals were prosecuted under the provisions of Prevention of Food Adulteration Act, 1954 [hereinafter referred to as 'the Act'] for committing offences under sections 2 (1a), 7(1) and 16(1)(a) of the Act. Since all the Criminal Appeals involve identical controversy, they are heard together and now they are being disposed of by this common judgment.

1.2. So far Criminal Appeal No. 203 of 1989 is concerned, the offending commodity is coriander powder, sample of which was collected on 9th February, 1982. Upon analysis by the Public Analyst, it was found to be adulterated. Hence, the Food Inspector, upon obtaining the consent accorded by the Local Health Authority, prosecuted the respondents for aforesaid offences by filing complaints in the Court of the Ld. Magistrate. Subsequently upon the application of the respondents, sample was sent for re-analysis to the Director of Central Food Laboratory and according to the said laboratory also the sample did not conform to the standard prescribed under the Act as well as the Rules and hence adulterated.

1.3. So far Criminal Appeal No. 35 of 1990 is concerned, the offending commodity is Tur Dal [Tuver Dal], sample of which was collected on 2nd February,

1984. Upon analysis by the Public Analyst, it was found to be adulterated. Hence, after obtaining consent from the Local Health Authority, the respondents were prosecuted.

1.4. So far Criminal Appeal No. 951 of 1990 is concerned, the offending article is Mukhvas [mouth freshener], sample of which was collected on 9th October, 1984. Upon receiving report of the Public Analyst, it was found that the sample did not conform to the standards laid down under the Act and the Rules and hence adulterated. After receiving the consent from the Local Health Authority, complaint was filed against the respondents, who later on made an application to get the sample reanalysed by the Director of Central Food Laboratory. The report of the Central Food Laboratory also found that the sample was adulterated. Thus, all the respondents have been prosecuted in the respective cases for the aforesaid offences.

1.5. At the trial, they pleaded not guilty and claimed to be tried. On the conclusion of the trial, the Ld. Magistrate by aforesaid judgments acquitted them of all the charges levelled against them. The main ground on which the order of acquittal has been passed is defective sanction/consent. In the opinion of the Ld. Magistrate since the consent did not contain detailed reasons for according it by the Local Health Authority, there was clear non-application of mind and hence the consent was not valid. In these appeals the said ground has been vehemently challenged by the Food Inspector.

2. I have heard Mr R C Kodekar, Ld. APP for the State. Mr P G Desai, learned advocate appears for the Food Inspectors. I have also heard Mr K V Shelat, Mr A I Pathan appearing for Mr B S Patel and Mr R A Variava, learned advocates for the respondents. I have also gone through the record of the appeals and in particular the evidence and judgments of the trial Court. The judgments of the Ld. Magistrate clearly show that the factor that has weighed with him the most is that the consent has been accorded under section 20 of the Act without application of mind since the Local Health Authority did not assign any reason for grant of it. While doing so, reliance has been placed by the Ld. Magistrate on the judgment rendered by the Bombay High Court in the case of the State of Maharashtra v/s. Vishram and others and also judgment of the same High Court rendered in the case of Gahininath Bhimrao Patekar v/s. State of Maharashtra reported in F.A.G. 1987 - 2 p. 95.

2.1. It is submitted by Mr Kodekar that the proposition of law on this aspect is well settled by now and the view taken by the Bombay High Court is no longer held to be valid.

2.2. As against that, the learned counsels for the respondents have supported the judgments of the trial Court. In the alternative it has been also submitted that since in all the cases the samples that have been taken prior to 20 years or more, the respondents may not be now convicted for the said offences and sent to prison. In support of this submission, reliance has been placed on the decision rendered by the Apex Court in the case of State of Maharashtra v/s. M/s. Gopalprasad Govindprasad Agarwal reported in AIR 1999 S.C. p. 1507.

2.3. So far the view taken by the Ld. Magistrate on the question of sentence is concerned, the controversy has now been laid at rest with the decision rendered by the Apex Court in the case of Suresh H Rajput v/s. Bhartiben Pravinbhai Soni reported in (1996) 7 S.C.C. p. 199. It may be stated that the said case also pertained to Municipal Corporation, Baroda, and it related to the consent accorded by the Local Health Authority on the line of the consent of these cases. In para. 6 the consent that was in question before the Apex Court has been verbatim reproduced. If it is compared with the consent contained in the present cases, it is identical. There is no change whatsoever. The Apex Court has thereafter held as under :-

> "7. It would thus be clear that the sanctioning authority, viz., Local Health Authority had considered the report of the public analyst and other pertinent papers and the documents which contained the report of the Food Inspector and thereafter accorded sanction to prosecute the respondent.
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> 8. The question that emerges is whether the sanction is in accordance with law. The learned Magistrate held that the sanction was a cyclostyled order and that the authority did not apply its mind to the facts constituting the offence and that, therefore, the grant of sanction is invalid in law. We find it difficult to give acceptance to the reasoning of the learned Magistrate. Unfortunately, the learned Single Judge of the High Court did not apply his mind nor adverted to any of the material questions. He merely concurred with the view expressed by the Magistrate in a cryptic order.

> In fact, on merits, the learned Magistrate has held that the prosecution had established the offence. All that was held was that the sanction was not in accordance with Section 20(1) of the Act."

2.4. In view of the aforesaid ratio laid down by the Apex Court, it is difficult now to hold that the consent accorded by the Local Health Authority in these cases was without application of mind and hence bad in law. As held by the Apex Court and this Court also that the Local Health Authority is not required to give detailed reasons for grant of the consent. If it is apparent from the contents of the consent that proper material has been taken into consideration and if the Local Health Authority is satisfied with the provisions of the Act are violated, the consent can be said to be accorded after application of mind and hence valid. In light of the aforesaid judgment of the Apex Court, the finding of the Ld. Magistrate with regard to invalid consent will have to be quashed and set aside. The orders of acquittal passed by the Ld. Magistrate based on such finding are also required to be quashed and set aside.

3. In these circumstances, now I am required to examine the alternative submissions advanced by the learned advocates for the respondents. In the case of the State of Maharashtra v/s. M/s. Gopalprasad Govindprasad Agarwal [supra] the Apex Court has upset the order of acquittal passed in favour of the accused on the ground of improper consent and confirmed by the High Court. But thereafter in para. 5 it has stated as under :-

> "5. Ordinarily, after recording the above findings we are required to set aside the impugned acquittal and remand the matter for disposal of the appeals on their merits but having regard to the fact that since the offences were allegedly committed almost 20 years have elapsed, we do not feel inclined to take such a course of action. We therefore dismiss the appeals with the above observations."

4. In the instant cases also, as stated above, the incidents are very old i.e. more than 20 years or more. This Court could have remanded the cases to the trial Court, but considering the period that has elapsed uptill now, I am not inclined to take such a course. If such course is taken, it will cause serious handicap to the respondents in effectively defending their interest at the retrial of the cases. It is,

therefore, not desirable to remand the cases. This is more so in view of the fact that at the time when the trial Court gave its decision, the view taken by it was based on the position of law prevalent then. It was only thereafter the aforesaid decision came to be rendered by the Apex Court. Hence, all the three appeals fail and they are hereby dismissed.

Office is directed to place copy of this judgment in all connected matters.

[AKSHAY H. MEHTA, J.]

* Pansala.